Supreme Court, U.S.
FILED
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No. 86-109

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
Appellants,

VS.

COUNTY OF SANTA CRUZ,
CALIFORNIA COASTAL COMMISSION, *et al.*,
Appellees.

On Appeal From The
Court Of Appeal Of The State Of California
Sixth Appellate District

MOTION TO DISMISS

DWIGHT L. HERR, County Counsel
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060
(408) 425-2041

Attorney for Appellee
County of Santa Cruz

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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For the reasons set forth below, appellee, County of Santa Cruz, pursuant to Rule 16.1(b) and (c) of the Rules of the Supreme Court of the United States, moves the Court to dismiss the appeal. If the appeal is treated as an application for Writ of Certiorari, the writ should be denied.

I

STATEMENT OF THE CASE

This is an appeal from a judgment of the California Court of Appeal, Sixth Appellate District[1], which held:

1. A contract entered into between the appellants and appellee County of Santa Cruz pursuant to State law[2] granted appellant tax relief in consideration for the appellants contractually restricting the use of their land for agricultural and compatible uses for a minimum term of ten years; and the contract did not prohibit the County from modifying the agricultural zoning regulations applicable to the property when implementing the California Coastal Act so as to require discretionary permits for additional single family dwellings and new agricultural structures on the property.

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[1] The decision of the California Court of Appeal, Sixth Appellate District, is reported at 179 Cal.App.3d 814, 225 Cal.Rptr.43, and is set forth at pages A-26 through 39 of the Appellant's Appendix to Jurisdictional Statement (hereinafter "D. App.").

[2] The contract was authorized by Article XXVIII of the California Constitution and the Williamson Act, also known as the Land Conservation Act of 1965, Government Code Sections 51200-51295).

2. Even if the contract could be interpreted as urged by the appellants to include a promise by the County not to change the agricultural zone regulations on the property during the term of the contract, the contract would be invalid as an attempt by the County to surrender its future right to exercise the police power.

The facts underlying the appeal are as follows:

The appellants are the owners of approximately 163 acres of land in the California Coastal Zone bordering the residential community of La Selva Beach in Santa Cruz County. D. App. A-26. The property is near Manresa State Beach and Monterey Bay. (Appellee's Exhibit O admitted in evidence in the trial court, Land Use Map attachment). The property has been devoted to irrigated farming use since the 1930's. (Reporter's Transcript [R.T.] page 77).

On February 23, 1971, appellants and appellee County of Santa Cruz entered into a contract pursuant to the Williamson Act (Government Code Sections 51200-51292) wherein it was agreed that the property would be restricted to agricultural and compatible uses. D. App. A-26. Thereafter, the County placed the subject property into an "Agricultural Preserve" (A-P Zone). The A-P Zone in effect at the time the contract was executed authorized multiple single-family dwellings and accessory agricultural structures as permitted uses, i.e., uses allowed without the need for a discretionary permit. D. App. A-26.

On November 7, 1972, the California Coastal Act (now codified in Public Resources Code Sections 30000, et seq.) was adopted by statewide voter initiative. Pursuant to the mandates of the Coastal Act,

as revised by the State Legislature, appellee County of Santa Cruz was required to adopt a Local Coastal Program (LCP) which conformed to the policies of the Coastal Act, and which provided for the County to assume jurisdiction for issuing Coastal Act permits. In 1982, as part of the implementation of its LCP, County adopted new zoning ordinances, including a revised A-P Zone applicable to the subject property. Under this revised A-P Zone, a discretionary permit, including the Coastal Act approval, is required to be obtained from the County for the construction of additional dwelling units and for new agricultural structures. D. App. A-26 and A-27.

Appellant Andrew Delucchi testified at the trial in 1982 as to alleged conversations he had with the then County Tax Assessor and the then County Planning Director eleven years earlier, prior to the execution of the contract, regarding Williamson Act contracts. He asserted that it was orally represented to him that not only would the property owner receive tax benefits but that the uses allowed by the then existing agricultural zoning regulations would be guaranteed during the term of any Williamson Act contract[3]; and appellants would therefore be able to construct houses for themselves and their two daughters and construct

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[3] At the trial, Mr. Delucchi asserted that they did not even consider the tax break when they entered into the contract. R.T. page 74. However, on cross-examination, Mr. Delucchi stated that while he talked to the Planning Director once regarding the Williamson Act Contract, he talked to members of the Tax Assessor's Office on several occasions. R.T. pages 63, 64, 65 and 79. Delucchis also filed their application for the Williamson Act Contract on the deadline date (i.e., December 31) indicated by the County's notice to interested parties for obtaining a tax benefit for the subsequent year. R.T. pages 137, 138 and 187.

various agricultural structures including greenhouses without any discretionary permits. R.T. pages 41 and 42 and Clerk's Transcript (C.T.) pages 3 and 4. The written documentation submitted at trial indicated that property tax assessment stabilization was the reason presented to interested persons by the County for entering into such contracts. Appendix to County of Santa Cruz's Motion to Dismiss (hereafter "S.C. App.") A-1 through A-4 (Defendant's Exhibits 'J' and 'K').

After execution of the contract, appellants continued the agricultural use of the property and received substantial reductions of taxes pursuant to the provisions of the Williamson Act contract. R.T. page 155. The valuation of the subject property for property tax purposes was reduced from $316,900.00 to $143,000.00 when the contract was executed. C.T. pages 352, 353 and 354.

In addition, after the execution of the contract, appellants applied for and received discretionary permits from the California Coastal Commission to build two additional dwellings on the subject property for their daughters[4]. C.T. pages 3[illegible] and 342. Building permits were issued by appellee County, and the two houses were constructed by the appellants. R.T. page 75.

In addition, an application for a discretionary use permit to construct twelve greenhouses and accessory buildings on the subject property was approved with conditions by appellee County of Santa Cruz in 1980.

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[4] The site already contained four permanent employee residences, a duplex and house for seasonal farm laborers, and accessory agricultural outbuildings. C.T. page 346.

C.T. pages 339 through 341. The applicant on behalf of the appellants considered the conditions too burdensome, but neither the appellants nor the applicant on their behalf exercised their right to appeal any of the conditions attached to the permit to the governing body of the appellee, and no application was made to the Coastal Commission for a Coastal permit for the greenhouses. R.T. pages 126-128. The use permit approval was allowed to expire by the applicant and the appellants. R.T. page 128. No other applications have been made by the appellants for any additional dwellings or agricultural structures or for any other use on the subject property. R.T. pages 75, 76 and 85.

II

ARGUMENT

A. The Appeal Herein Should Be Dismissed For Failure To Present A Substantial Federal Question.

The appeal does not present a substantial federal question either in terms of its effects on the appellants nor in terms of its application to others. The question raised in this case is whether the appellants are required to obtain a discretionary permit approval for multiple single-family dwellings and for new agricultural structures in the same manner as everyone else in the California Coastal Zone or whether the provisions of the Williamson Act contract executed in 1971 exempt appellants from those general requirements[5].

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[5] As stated in the Petition for Review filed by appellants with the California Supreme Court:

> "Shortly after this contract between the County and landowner was executed, the County changed its Williamson Act

Appellants have not shown that they have been prohibited in any way from continuing to utilize the subject property for agricultural uses or from carrying out their original intended plans for the property. As indicated hereinabove and as noted in the California Court of Appeals' opinion, appellants received coastal permits and constructed two additional single-family homes on the subject property for their daughters, and appellants have never applied for a permit to construct an additional dwelling for themselves on the subject property. Inasmuch as the existing agricultural zoning regulations have a density standard of one dwelling unit per 40 acres[6] and the subject property is in excess of 160 acres, there is no reason to assume that appellants would be denied any such permit if they applied. R.T. pages 135 and 136.

As to the appellants' claim that the revised County zoning regulations constitute a "taking" of their prop-

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contracts and no longer used the Ag Preserve Zone as enacted by Ordinance No. 1283. Consequently, at the present time, there are only four owners in all of Santa Cruz County that have this type of Williamson Act contract." (Page 6 of Petition for Review, lines 21-26).

The appellants were the only one of the four such owners to challenge the revision of the agricultural preserve zone regulations adopted by the County to implement the California Coastal Act.

[6] The agricultural zoning in effect at the time of the execution of the Williamson Act provided for a density standard of one dwelling unit per 10 acres. Appellants, through their attorney, expressly stated in writing to the governing body of the appellee County at the time the ordinance was being considered to revise the agricultural preserve zone regulations that they did not object to the change in the density standard. C.T. page 256.

erty, it is apparent from this Court's decision in *Penn Central Transportation Company v. New York City* (1978) 438 U.S. 1104, 57 L.Ed.2d 631, 98 S.Ct. 2646 that the Court of Appeals' characterization is correct that appellants have "failed to make out even a colorable claim for a taking". D. App. page A-37. In the *Penn Central* case, this Court upheld additional regulatory procedures made applicable to existing uses and noted that if such procedures actually resulted in a denial of any proposed use then the property owner would have a judicial remedy to seek review of such a denial. It is further noted in the *Penn Central* case that the new regulations allowed appellants therein to continue to use the property as precisely as it had been used for the prior 65 years, i.e., as a railroad terminal. Similarly, in this case, the revised agricultural zone regulations of appellee County of Santa Cruz allow appellants to continue the agricultural use of their property to which it has been devoted since the 1930's[7]. R.T. page 77. As indicated above, appellants have never been denied any use for which they have made application, and judicial review is available to review any action on a permit application in the future.

B. There Are No "Special And Important Reasons" For Granting Review By Writ Of Certiorari.

Review by this Court on Writ of Certiorari is not a matter of right and is only granted when there "are special and important reasons therefor". U.S. Sup.Ct. Rule 17. Specific reasons include: (a) a conflict

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[7] The California Coastal Act also expressly recognizes the right to continue pre-existing uses. California Public Resources Code Section 30608.

between a decision of a state court of last resort on a federal question with the decision of another state court of last resort or of a federal court of appeals, or (b) when a state court has decided an important question of federal law which has not been, but should be decided by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court. None of these reasons nor any other persuasive reasons are present herein.

Issues raised by petition for certiorari as well as in an appeal must also be important to the public and not just to the parties. *NLRB v. Pittsburgh S.S. Company* (1951) 340 U.S. 498, 95 L.Ed. 479, 71 S.Ct. 453; *Rice v. Sioux City Memorial Park Cemetery, Inc.* (1955) 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614.

However, as indicated hereinabove, only four property owners entered into Williamson Act contracts at a time when the County's Agricultural regulations allowed multiple single-family dwellings and various agricultural structures without a discretionary permit. Appellants were the only one of the four such property owners who challenged the revision of the Agricultural Preserve Zone District regulations which required them to obtain discretionary permit approvals in the same manner as similarly situated property owners. Thus, this matter is only important to the appellants.

Moreover, there is no important question of federal law to be decided in this case. The California Court of Appeals' decision reviews in detail the provisions of the Williamson Act contract in question and appropriately concludes that the contract could not reasonably be interpreted under State law as a promise by the County not to change the then existing zoning

regulations, but instead, the contract is worded to carry out the scheme of the Williamson Act to grant property tax relief to a landowner in exchange for their contractual agreement to restrict the use of their land to agricultural and compatible uses. D. App. A-32 through A-34.

In questions concerning alleged impairment of contract and violation of other constitutional rights, this Court has stated that it may independently make an appraisal of the applicable State laws and decisions of its courts but that respectful consideration and great weight is to be given to the views of the State's highest courts. *Indiana ex. rel. Anderson v. Brand* (1938) 303 U.S. 95, 1001, 82 L.Ed. 685, 691, 58 S.Ct. 443. See also *Larsen v. South Dakota* (1928) 278 U.S. 429, 433, 73 L.Ed. 441, 444, 49 S.Ct. 196; *Higginbotham v. Baton Rouge* (1938) 306 U.S. 535, 83 L.Ed. 968, 59 S.Ct. 705; *California Liquor Dealers v. Midcal Aluminum* (1980) 445 U.S. 97, 111, 63 L.Ed. 233, 247, 100 S.Ct. 937.

There is no substantial question involved with regard to the proper interpretation of the California Constitution and the implementing State legislation regarding Williamson Act contracts. As noted by the Court of Appeal opinion, the authorization for the Williamson Act and the contract in question was derived from Article XXVIII of the California Constitution in which the State Legislature was authorized to provide for assessment of open space land which was "enforceably restricted" on the basis of its restricted use rather than at fair market value. D. App. A-30, fn.5.

The California State Legislature then implemented this constitutional provision by adoption of the Williamson Act. Government Code Sections 51200-51295.

Every California case that has discussed the consideration for a Williamson Act contract refers to tax relief as being the bargained for consideration granted to property owners in exchange for the property owners agreeing to restrict the use of their property by contract to agricultural uses. No cases refer to zoning guarantees as a consideration to be granted to property owners in such a contract.

In *Schillenberger v. Board of Equalization,* (1983) 147 Cal.App.3d 510, 513, the Court stated the following:

> "In an effort to preserve agricultural land and discourage its unnecessary and premature conversion, the Legislature in 1965 enacted the Williamson Act. (Gov. Code Section 51200, et seq.) Under the Act, cities and counties are authorized to enter into annually renewable contracts with the owners of open space land. By such contracts, the landowner agrees to restrict his property to open space, agricultural or related uses for at least ten years; *in return, the local government agrees to reduce the assessed valuation of that land to reflect such restricted use through assessed value.* (Gov. Code Sections 51230, 51240, 51242, 51244.) Because the agricultural use value of land in California is typically lower than market value, the landowner can reduce property taxes by temporarily forfeiting development rights." (Emphasis added.)

In *County of Marin v. Assessment Appeals Board,* (1976) 64 Cal.App.3d 319, 328, the Court stated the following:

> "As expressed in the statute, the very purpose of the Williamson Act is to encourage the preservation of the maximum amount of agricultural land as open space (Sections 51220, 51222, 51223) and to allow the removal of restrictions only when the devotion of land for agricultural use is neither necessary nor desirable (Sections 51256, 51280). *At the same time, the landowner who commits his land to agricultural use for a certain period of time also benefits from the agreement by obtaining the contemplated tax benefit, the agreed upon consideration for the restrictions.*" (Emphasis added.)

In *Sierra Club v. City of Hayward,* (1981) 28 Cal.3d 840, 851, the California Supreme Court stated the following:

> "The (Williamson) act empowers local governments to establish 'agricultural preserves' consisting of lands devoted to agricultural uses and other uses compatible therewith. (*Id.* Section 51230) Upon establishment of such preserves, the locality may offer to owners of included agricultural land the opportunity to enter into annually renewable contracts that restrict the land to open space use for at least ten years. (*Id.* Sections 51240, 51242, 51244.) *In return, the landowner is guaranteed a relatively stable tax base,* founded on the value of the land for open space use only

> and unaffected by its development potential." (Emphasis added.)

In *Honey Springs Homeowners Association, Inc., et al. v. Board of Supervisors of San Diego County, et al.*, (1984) 157 Cal.App.3d 1122, 1130-1131, the Court stated the following:

> "Under the (Williamson) act local governments may, but are not required to, establish 'agricultural preserves' (Section 51230), i.e. areas devoted to either agricultural use, recreational use, open space use, or the combination of any such uses . . . by executing voluntary contracts with property owners restricting land use for an initial term of no less than ten years. The contracts are automatically renewed each year unless notice of nonrenewal is given pursuant to section 51245. (Section 51244). *By agreeing to restrict the use of land, the landowner receives a reduced property tax assessment based upon the value of the land for its current use rather than its market value.*" (Emphasis added.)

Moreover, this Court has recognized that relinquishment of government power should not be implied absent clear indication that the legislature so intended to bind itself contractually. As stated in *National Railroad Passenger Corporation v. Atchison, Topeka & Sante Fe Railway Company* (1985) 470 U.S. ___, 84 L.Ed.2d 432, 446, 106 S.Ct. ___; "indeed 'the continued existence of the government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation'."

Even assuming the contract granted appellant a right to the then existing zoning regulations during the term of the contract, a statute that alters contractual rights or obligations to a minimal degree does not result in a constitutional impairment of contract. *National Railroad Passenger Corporation v. Atchison, Topeka & Sante Fe Railway Company, supra,* 84 L.Ed.2d at 450. The adoption of regulations requiring discretionary reviews by governmental agencies does not in itself constitute any substantial impairment. *Penn Central Transportation Company v. New York City, supra.*

In addition, the Williamson Act contract entered into by appellants and appellee incorporated the express provisions of State law for a minimum term of ten years and subject to annual renewal only in the absence of a notice of termination from either party. Government Code Sections 51244 through 51246. Accordingly, even if the appellants expected to have contractual rights to the zoning regulations in effect at the time the contract was executed, those rights could only have been guaranteed for ten years. In fact, the contract was in existence for more than ten years at the time the Agricultural Preserve Zone regulations were revised in 1982 to require discretionary permits. Thus, any reasonable expectations which the appellants had at the time they executed the contract in 1971 were not infringed upon in any event.

CONCLUSION

For all of the foregoing reasons, appellee County of Santa Cruz respectfully submits that this appeal should be dismissed, and that there are no reasons for granting review by certiorari.

Respectfully submitted,

DWIGHT L. HERR, County Counsel

Attorney for Appellee
County of Santa Cruz

APPENDIX

APPENDIX A

PLANNING DEPARTMENT
COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER 701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060

(408) 425-2194

Walter J. Monasch, AIP
PLANNING DIRECTOR

December 22, 1970

Dear Property Owner:

This is a reminder that three assessment stabilization programs are available to owners of agricultural and/or open space lands in Santa Cruz County. This notification is intended for all property owners of 5-acres or more. If you are interested in continuing agriculture as a major industry and in maintaining the scenic, open qualities that make this area attractive and healthful for the people in the county, you may wish to apply for coverage under the Land Conservation Act (Agricultural Preserve), the Statement of Intention program or an Open Space Easement.

Agricultural Preserve

The minimum size permitted for an agricultural preserve is 50-acres, except for grazing land which is 100-acres. Contiguous parcels under different ownership may be combined in order to meet the minimum size requirement; however, the minimum individual parcel size considered is 10-acres with the exception for grazing land which is 20-acres. After approval of an agricultural preserve, each property owner is asked to enter into a contract whereby he agrees to restrict the use of his property to agricultural uses for a period of ten years.

Statement of Intention

This program involves the issuance of a certificate by the Board of Supervisors to not rezone covered property

from the A-10 (Exclusive Agriculture) District within the foreseeable future. The minimum parcel size is 5-acres except for grazing land which is 20-acres. Since no preserve will be formed under this program properties may be submitted on an individual basis.

Open Space Easement

This program may be applied to scenic, open land, as well as agricultural land. However, it involves a contract by which the property owner retains the present open character of his land for a period of 20 years.

The Planning Department will review each application on the basis of specific criteria applied to each program and make its recommendation to the Planning Commission at a public hearing. The Planning Commission then forwards its recommendation to the Board of Supervisors for action.

For detailed information, please contact the Santa Cruz County Planning Department, 400 Governmental Center, 701 Ocean Street, Santa Cruz, CA 95060, or preferably call 425-2194. If calling from Watsonville dial 688-2033.

In the event that you are interested in applying in order to be eligible for tax relief in the 1971-72 fiscal year, applications should be completed and submitted to this office by December 31, 1970. Because of the late date in this notification consideration will be given to applications submitted during the first week in January, 1971.

Sincerely,

WALTER J. MONASCH, AIP
Planning Director

/s/ DENNIS PISILA
DENNIS PISILA, Senior Planner

Proof of Publication

(2015.5 C.C.P.)

STATE OF CALIFORNIA, SS.
COUNTY OF SANTA CRUZ.

FARMERS AND OWNERS OF SCENIC LANDS

I, the undersigned say;

That I am over the age of eighteen and not interested in the above entitled matter; that I am now, and at all times embraced in the publication herein mentioned was, the principal clerk of the printer of the Santa Cruz Sentinel, a daily newspaper printed, published and circulated in the said county and adjudged a newspaper of general circulation by the Superior Court of the County of Santa Cruz, State of California, under proceeding No. 25, 794; that the _____

FARMERS AND OWNERS
OF SCENIC LANDS

of which the annexed is a true printed copy, was published in the above-named newspaper on the following dates, to wit: October 15, 1970

FARMERS AND OWNERS OF SCENIC LANDS—

Seeking Assessment Stabilization?

SANTA CRUZ COUNTY IS OFFERING THESE PROGRAMS:

* **Land Conservation Act**
* **Agricultural Zoning**
* **Open Space Easement**

Information call:
COUNTY PLANNING DEPT.—425-2194
ASSESSOR'S OFFICE—425-2331
(FROM WATSONVILLE—688-2033)
AG. COMMISSION—724-1149

I Certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Santa Cruz, California, this 15th day of October, 1970

Signature /s/ MARTHA PARTESFIELD
MARTHA PARTESFIELD